

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE:)
BELLSOUTH TELECOMMUNICATION'S)
TARIFF FILING TO REDUCE GROUPING)
RATES IN RATE GROUP 5 AND TO) DOCKET NO. 00-00041
IMPLEMENT A 3 PERCENT LATE)
PAYMENT CHARGE.)

OFFICE OF THE
EXECUTIVE SECRETARY

PETITION FOR STAY OF EFFECTIVENESS

Tennessee consumers, represented by the Consumer Advocate Division, respectfully submit this Petition for Stay of Effectiveness of the oral decision of the Tennessee Regulatory Authority to approve BellSouth's tariff. For cause Tennessee consumers would respectfully show:

1. That the Tennessee Regulatory Authority approved BellSouth's tariff in the above referenced case without permitting Tennessee consumers to present or provide cross-examination of all of the evidence in violation of the procedural and substantive due process rights of Tennessee consumers.
2. That in reaching its decision the Tennessee Regulatory Authority failed to follow the procedures of Tenn. Code Ann. § 4-5-312 and Tenn. Code Ann. § 4-5-313 and violated the procedural and substantive due process rights of Tennessee consumers.
3. That the Tennessee Regulatory Authority failed to follow the procedure of Tenn. Code Ann. § 65-2-108 and Tenn. Code Ann. § 65-2-109 and violated the procedural and substantive due process rights of Tennessee consumers.

4. That the Tennessee Regulatory Authority failed to follow the procedure of Tenn. Code Ann. § 65-5-210 (a) and violated the procedural and substantive due process rights of Tennessee consumers.

5. That the Tennessee Regulatory Authority erroneously found in favor of BellSouth and against Tennessee consumers without the presentation of any evidence by BellSouth.

6. That the Tennessee Regulatory Authority majority's denial of the Initial Order of the Hearing Officer was arbitrary and capricious or clearly erroneous.

7. That the Tennessee Regulatory Authority decision exceeds the statutory authority of the agency and is based upon unlawful procedure.

8. That the Tennessee Regulatory Authority decision is contrary to the legislative intent of Tenn. Code Ann. § 65-4-125 (b) and said provision provides:

No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall bill and collect from any subscriber to telecommunications services any charges for services to which the provider or person acting on behalf of the provider knows or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services.

9. That the Tennessee Regulatory Authority decision permits BellSouth to bill and collect charges for services it knew or should know were not ordered by consumers.

10. That the Tennessee Regulatory Authority decision permits BellSouth, when acting on behalf of another telecommunications provider, to bill and collect charges for services it knew or should have known are not and were not in the tariff or contract.

11. That the Tennessee Regulatory Authority decision permits BellSouth, when acting on behalf of another billing aggregator, to bill and collect charges for services it knew or should

have known are not and were not in the tariff or contract and is in violation of statutory and common law.

12. That Tenn. Code Ann. § 65-4-125 (b) codified the common law or created new consumer rights.

13. That the TRA's decision is contrary to the legislative intent of Tenn. Code Ann. § 65-5-208 (a) (1) which provides that rates for basic local exchange service include all recurring and nonrecurring charges.

14. That the decision is contrary to Tenn. Code Ann. § 65-5-209 (f) which prohibits increases to basic local exchange service rates which include recurring and nonrecurring charges for four (4) years.

15. That the existing rate for BellSouth's basic local exchange service is an average rate which was arrived at based upon the actual payment practices of customers.

16. That the average rate permitted BellSouth was allowed "working capital" and return on the "working capital" required to "carry the note" for those who payed late.

17. That the average rate also incorporated any increase in uncollectible revenues which also caused average rate to be higher for recovery of those costs.

18. That Tennessee consumers will suffer irreparable damages upon termination of basic local exchange services if they are unable to, or do not pay, the new charge.

19. That Tennessee consumers will suffer irreparable damages if they are not permitted to reconnect basic local exchange service after termination if they are unable to, or do not, pay the new charge.

20. That one or more members of the Authority noticed and relied upon United Telephone-Southeast's late charges but that United Telephone-Southeast's late charges are not analogous because they were implemented prior to June 6, 1995. Furthermore, UTSE is UTSE, and not BellSouth.

21. That Tennessee consumers who are end users of other service providers will suffer irreparable damages if they are terminated for non-payment of BellSouth's new charge.

22. That Tennessee consumers who are end users of other service providers will suffer irreparable damages if they are not permitted to or are unable to restore their services without paying BellSouth's new charge.

23. That BellSouth's late payment charge is an extortion in violation of Tenn. Code Ann. § 65-4-122 (b).

24. That there is no dispute of material fact that the rates for basic local exchange service on June 6, 1995, and prior to the decision, are average rates which included the recurring and non-recurring cost of billing, collection and late payments.

25. That the TRA decision is anticompetitive and contrary to legislative intent because the TRA has created a right in BellSouth as a billing aggregator that other non regulated billing aggregators do not have under state law.

26. Alternatively, the TRA decision is anticompetitive and contrary to legislative intent because the TRA has created a right through BellSouth Telecommunications, in favor of its non-regulated affiliate, BellSouth Billing, and other billing aggregators do not have such a right under state law.

27. That the TRA has created a right to assess a charge in favor of BellSouth's non-regulated affiliate aggregator, BellSouth Billing, that other non-regulated affiliates can not have under state law.
28. That BellSouth Billing, incurs the cost of billing and collection, not BellSouth Telecommunications.
29. That when BellSouth Billing incurs the cost of billing and collection for other telecommunications service providers the affiliate has no right to a late payment charge under state law.
30. That there is no privity of contract between BellSouth and the end user of a "customer" for whom BellSouth bills and that the creation of privity of contract is arbitrary and capricious or clearly erroneous and is contrary to legislative intent.
31. That BellSouth is a factor of the "customer" for whom it bills and is only empowered to bill the end user and remit the funds back to the customer.
32. That BellSouth does not have the authority to modify the payment terms agreed to by the the customer and the end user.
33. That BellSouth Billing or BellSouth Telecommunications factoring service, should not be permitted to earn an additional profit from the end user on top of the compensation they receive from "customers."¹
34. That the late fee would be an additional profit above and beyond the contractual agreement they have with the customers.

¹35 C.J.S. *Factors* § 22

35. That BellSouth Billing and BellSouth Telecommunications is several levels removed from the end-user and provides no telecommunications service to an end user.

36. That the TRA decision changes the terms and conditions of basic local exchange service in violation of Tenn. Code Ann. § 65-5-209 (c).

37. That United Telephone-Southeast's late payment charge was in effect prior to June 6, 1995 or is otherwise not relevant to the decision in this case.

38. That the Tennessee Regulatory Authority has no authority to exempt BellSouth Telecommunications or any of its affiliates from the application of Tenn. Code Ann. § 65-4-125.

39. That Tennessee consumers other than lifeline and linkup customers will be irreparably harmed by BellSouth's tariff.

40. That BellSouth's tariff is intended to have the effect of or will have the effect of denying services to customers for nonpayment of late charges assessed by BellSouth.

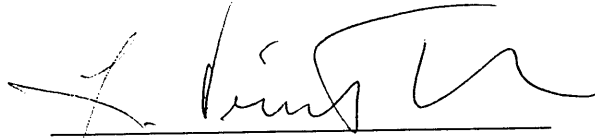
41. That Tennessee consumers who will have services denied, terminated or not restored by BellSouth because of nonpayment of late charge amounts will be denied access to 911 emergency services and will be in danger of and suffer irreparable harm to their persons and property.

42. That review of the agency decision would not provide an adequate remedy because Tennessee consumers will be irreparably harmed.

43. That the majority decision does not permit development of the record regarding rate discrimination in the application of BellSouth's grouping discounts.

Wherefore Tennessee consumers pray that the Tennessee Regulatory Authority stay its decision and BellSouth's implementation of the late payment tariff.

Respectfully submitted,



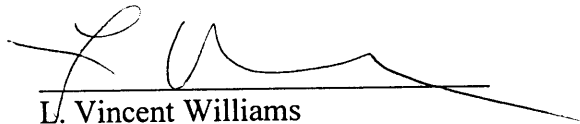
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been faxed and mailed postage prepaid to the parties listed below this 26th day of July, 2000.

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